

Fair Political Practices Commission
Memorandum

To: Chairman Randolph, Commissioners Blair, Downey, Huguenin, and Remy

From: John W. Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Subject: March 2006 Work Plan Revisions

Date: March 3, 2006

I. INTRODUCTION

Each year the Commission approves a regulatory work plan for the next calendar year.¹ The plan provides for quarterly work plan revisions. Attached is the March update to the regulatory work plan for calendar year 2006 reflecting changes during the first quarter. A review of the calendar will show a substantial number of changes from the calendar adopted by the Commission in 2005. Many of these changes were the result of the departure of two senior Commission Counsel from the legal division in December 2005 and January 2006.

II. PROPOSED REVISIONS

A. CAMPAIGN

Item 1. McCain-Feingold: Under the recently-amended federal counterpart of the PRA, a specified percentage of certain expenditures jointly relating to federal and state/local elections must be reported as attributable to the federal election. This project considers whether a more accurate method for allocating such expenditures may be used in California. Staff has prepared and presented a draft letter to the Federal Elections Commission (FEC), seeking an advisory opinion on this issue.

CHANGE: *The Commission approved the text of the advice request at its December meeting. However, the FEC declined to provide an advisory opinion because the regulation has not yet been adopted, and its terms are hypothetical at present. Staff has proposed to resume the rulemaking process and to return for prenotice discussion in July, with an option to stay the effect of the regulation until the FEC has an opportunity to state its position on federal preemption.*

¹ See staff memorandum dated December 1, 2005, *Approval of 2006 Regulatory Priorities*.

Item 3. Hard & Soft Money Bank Accounts: Section 85303 sets limits on contributions received by committees and political party committees from individual contributors, for the purpose of making contributions to candidates for elective state office. However, section 85303(c) provides that no limits apply to contributions to such committees that are used for purposes *other* than making contributions to candidates for elective state office. This project investigates whether contributions in excess of the contribution limits to these committees should be required to be deposited into a separate bank account, in order to avoid circumvention of the contribution limits.

***CHANGE:** At its December meeting, the Commission heard prenotice discussion of proposed regulation 18534. Proposed regulation 18534 would require committees to keep separate bank accounts for deposit of contributions that will be used for supporting or opposing candidates for elective state office, as distinct from contributions intended to be used for all other purposes. The draft regulation also contained rules to ensure that funds deposited into a “non-candidate support account” could not be re-dedicated to candidate support by transfer to another committee. The Commission opted to bring this matter back for a second prenotice discussion, and staff proposes to do so at the July meeting for the convenience of the public, since parties interested in proposed regulation 18530.3 are likely to be interested as well in proposed regulation 18534.*

Item 5. Recurring Credit Card Contributions: Some contributions are set up to be paid out over a specified period of time, or on an ongoing basis. For example, the contributor may wish to contribute \$10 a month for an indefinite time period. This project explores whether the total amount of the contributions should be reported when the first payment is made, or whether disclosure should be made as each installment is actually paid.

***CHANGE:** Due to the departure of the assigned attorney, this item has been rescheduled and reassigned. Pre-notice discussion and adoption have been delayed and will now occur in July and September, respectively.*

Item 7. One-Bank Account Rule -- Contributions Through Vendors: Vendors sometimes run a website through which they collect candidate contributions and contributor information. Staff recommends that the Commission define the type of “account” this vendor creates in collecting and holding the contributions, specifying into which accounts the vendor may hold this money. In addition, a second similar issue concerns vendor fees. A vendor usually subtracts his fee from the money collected before transferring the money to the committee. The vendor is an agent of the committee and not an intermediary. Thus, when the vendor receives the contribution the committee is also deemed to have received it.

***CHANGE:** Due to the departure of the assigned attorney, this item has been rescheduled and reassigned. Pre-notice discussion and adoption have been delayed and will now occur in July and September, respectively.*

Item 10. Advertising Disclosure Cluster: A primarily formed measure committee must disclose its two highest donors. A variety of issues have arisen regarding the construction of these provisions. Staff proposes regulatory action to refine these provisions of the Act.

***CHANGE:** Due to pending legislation that may affect the advertising disclosure rules, and the possibility of ballot measures to be voted on in the November election also impacting advertising disclosure rules, staff is recommending the Commission delay any regulatory action on these rules. Rather, discussion memoranda will be presented in May and December.*

Item 11. In re Pirayou Opinion Request (O-06-016). The Commission will consider whether it will issue an opinion pertaining to the application of Government Code section 89519. The opinion request specifically asks whether campaign funds, which became “surplus campaign funds” through the error of a campaign treasurer, can be used for purposes not specified in subdivision (b) of Government Code section 89519.

NEW ITEM

B. CONFLICT OF INTEREST DISQUALIFICATION AND DISCLOSURE

Item 1. Aggregation Under Section 84308: Section 84308 disqualifies any “officer” who is running or has run for elective office, from participating in decisions affecting his or her campaign contributors. This project considers whether further clarification of aggregation rules under § 84308 is necessary. (Carryover from 2005.)

***CHANGE:** After initial consideration of the item in January, the Commission requested that an additional interested persons’ meeting be held. That meeting is now set for March 22, 2006. The adoption hearing has been moved from March to May.*

Item 2. Stem Cell Commission: Two sections of the new law refer to the PRA (Health & Safety Code §§ 125290.30(g) & 125290.50). Staff proposes to investigate whether Prop 71 amended the Act indirectly, and the FPPC’s role in advising/enforcing these provisions. (Carryover from 2005.)

***CHANGE:** Due to the departure of the assigned attorney, this item has been rescheduled and reassigned. The status report will be presented in April.*

Item 3. SB 8: Revolving Door; Local Officials: Commencing July 1, 2006, local officials who held positions with certain local governmental agencies will be prohibited for one year after leaving office, from contacting their former employer for compensation, for the purpose of influencing administrative or legislative action or an action involving a permit, license, grant, or contract, or the sale or purchase of goods or property.

CHANGE: *Due to staffing changes and in order to equalize workload, this item has been rescheduled. Pre-notice discussion and adoption have been delayed and will now occur in October and December, respectively.*

Item 4. Reg. 18754: Statements Of Economic Interests (Newly Created Agencies). Section 87302.6 requires that all members of newly created agencies file SEI's within 30 days of assuming office. The SEI's must disclose all economic interests until a conflict of interest code is approved. Staff proposes amending regulation 18754 to exempt members of agencies that are merged, and agency heads already filing under full disclosure, under some circumstances.

CHANGE: *Due to staffing changes and in order to equalize workload, this item has been rescheduled. Pre-notice discussion and adoption have been advanced and will now occur in July and September, respectively.*

Item 6. Wedding Gifts/Baby Showers And Receptions:

(a) Wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions are not limited, if the gifts are of substantially the same value. Currently there is no exception for baby shower gifts.

(b) In addition, while presents exchanged at holidays, birthdays and similar occasions are not reportable, wedding gifts are still reportable. Staff recommends dealing with this ambiguity.

(c) Attendance at weddings: Staff proposes amending reg. 18942 to codify prior staff advice applying the home hospitality exception to attendance at weddings, birthday parties, and similar events.

(d) Staff also proposes clarifying changes to regulation 18944 further codifying Commission Opinion (*In re Cory* (1976) 2 FPPC Ops. 48) and subsequent staff advice (*Lewis* Advice Letter, No. A-93-173) with respect to family gifts. Proposed amendments to 18944(a) would add a specific provision stating that gifts given directly to an official but intended for use of the official's child (such as baby shower gifts), are gifts to the child.

CHANGE: *The Commission heard this item in February and requested a second prenotice hearing in April to consider further amendments to regulation 18944 in response to public comment. Consequently, adoption will be delayed until June.*

C. ADMINISTRATIVE, ENFORCEMENT, AND OTHER ISSUES

NO CHANGES.

D. OTHER MISCELLANEOUS ITEMS

Item 1. Annual Technical Clean-Up: The Commission annually considers technical and other minor changes resulting from the staff's review of Commission regulations.

CHANGE: *This item has been moved to November.*

Appendix 1: Regulation Calendar